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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

JERRY LEE ESPINOZA,

Defendant and Appellant.

B182763

(Los Angeles County
Super. Ct. No. KA069075

APPEAL from a judgment of the Superior Court of Los Angeles County, Philip S. Gutierrez, Judge. Affirmed

Jonathan B. Steiner and Ronnie Duberstein, under appointments by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Lawrence M. Daniels and Yun K. Lee, Deputy Attorneys General, for Plaintiff and Respondent.

Jerry Lee Espinoza appeals from judgment entered following a jury trial in which he was convicted of unlawfully driving or taking a vehicle (Veh. Code, § 10851, subd. (a)) and resisting, obstructing or delaying a peace officer, a misdemeanor, (Pen. Code, § 148, subd. (a)(1)). Following a court trial he was found to have previously suffered a serious or violent felony within the meaning of the Three Strikes law (Pen. Code, §§ 667, subds. (b) – (i), 1170.12, subds. (a) – (d)) and served two separate prison terms within the meaning of Penal Code section 667.5, subdivision (b). He was sentenced to prison for a total of seven years and contends he was improperly sentenced to the upper term in violation of his federal constitutional right to a jury trial. For reasons explained in the opinion, we affirm the judgment.

FACTUAL AND PROCEDURAL SUMMARY

On December 20, 2004, Police Officer Wayne Worley was driving in a marked patrol car when he attempted to stop a Honda Accord vehicle with an expired registration. Appellant was the driver of the vehicle and he at first pulled to the side of the road and slowed down but then drove back into the lane of traffic and continued for about a half block. Thereafter, the car stopped and the occupants exited the vehicle. Appellant dropped a screwdriver and ran across the street. Officer Worley chased appellant for about a minute before losing sight of him.

Rick Mora was replacing a gas line in an alley behind a supermarket when appellant jumped the wall, walked over to him and asked if he could have his hard hat and a drink of water. When appellant asked for Mr. Mora's orange work vest, Mr. Mora told him "no," but there was one in his truck. Appellant put the orange vest on and walked into a nearby building. Mr. Mora later identified appellant for the police.

The Honda vehicle belonged to Felipe Valdes and Mr. Valdes had not given appellant permission to drive the car. When it was returned to Mr. Valdes, the ignition switch was broken.

Appellant was sentenced to the upper term of three years for the Vehicle Code violation, which was doubled pursuant to the Three Strikes law. The court stated it

selected the upper term pursuant to the Rules of Court, specifically that appellant was on parole at the time of the current offenses. An additional year was imposed for the prior prison term enhancement found true pursuant to Penal Code section 667.5, subdivision (b).

DISCUSSION

Appellant contends he was improperly sentenced to the upper term in violation of his federal constitutional right to a jury trial. (*Blakely v. Washington* (2004) 542 U.S. 296.) He claims the fact that he was on parole at the time of the current offense was neither found true by a jury beyond a reasonable doubt nor admitted by appellant.

In *People v. Black* (2005) 35 Cal.4th 1238, 1254, the California Supreme Court held that *Blakely* does not invalidate California's upper-term sentencing procedure. Appellant's argument raises no issues not resolved in *Black*.

DISPOSITION

The judgment is affirmed.

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WILLHITE, J.

We concur:

EPSTEIN, P. J.

HASTINGS, J.*

* Retired Justice of the Court of Appeal, Second Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.